

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 18-19, 21-25, and 28-34 are pending in the present application. Claims 29, 31 and 33 have been amended to address the formal matters raised by the Examiner in the outstanding Official Action.

In the outstanding Official Action, claims 18-19, 21-25 and 28-34 were rejected under 35 USC §112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the present invention. This rejection is respectfully traversed.

In imposing the rejection, the Official Action states that claims 29, 31 and 33 are indefinite for reciting the term "disorders". The Official Action alleged that it was unclear what disorders were treated in the serotonin- or melatonin-mediated illness. However, claim 29 has been amended to recite a "composition". Claims 31 and 33 are now directed to a method for treating serotonin- or melatonin-mediated mood or sleep disorders. As a result, applicants believe that the present amendment obviates this rejection.

Claim 29 was rejected for reciting the phrase "suitable for the treatment". However, as noted above, claim 29 has been amended so that this term is no longer recited. As a result, applicants believe that the present amendment overcomes this rejection.

The Official Action also stated that claims 29 and 31 were indefinite for reciting "carbohydrates, fats and proteins". However, while these terms are broad, applicants believe that the terms are definite to one of ordinary skill in the art. Applicants believe that one of ordinary skill in the art is familiar and can clearly identify what constitutes a carbohydrate, fat, or protein. Indeed, carbohydrates, fats and proteins are the energy-caring components of food. Thus, in view of the above, applicants believe that this phrase is definite to one skilled in the art.

Claim 29 was rejected under the judicially created Doctrine of Obviousness-type double patenting as allegedly being unpatentable over claims 1-12 of U.S. Patent No. 6,613,367, in view of DeWILLE et al. This rejection is respectfully traversed.

Applicants believe that the claimed invention is distinct from the claims of U.S. Patent No. 6,613,367. As the Examiner is aware, a double patenting rejection of the obviousness-type is "analogous to the non-obviousness requirement of 35 USC §103 with the exception that the patent principally

underlying the double patenting rejection is not considered prior art. *In re Braithwate*, 379 F.2d 594, 154 USPQ 29 (CCPA 1967). Thus, any analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 USC §103 obviousness determination.

Claim 29 of the present application is not an obvious variation of the invention claimed in U.S. Patent No. 6,613,367 ('367). The '367 patent is directed to a product for the complete nutrition of an infant. The product comprises a specific range of proteins, tryptophan and a specific weight ratio of tryptophan relative to the sum of neutral amino acids present in the composition.

This stands in contrast to claim 29, which is directed to a composition comprising carbohydrates, fats and proteins, and containing more than 44 mg up to 4000 mg of folic acid, more than 0.8 mg up to 2000 mg of vitamin B12, and more than 50 mg up to 10,000 of vitamin B6 per 100 kcal of said carbohydrates, fats and proteins, and further containing at least one of riboflavin, thiamine, niacin and zinc.

While the Official Action acknowledges that the claims of the '367 patent fail to include fat, applicants note that claim 29 also recites a component selected from riboflavin, thiamine, niacin and zinc. There is no motivation or suggestion from the '367 patent to include such a component. Applicants

acknowledge that the disclosure of applicants' patent can be consulted to determine what is being claimed. In other words, applicants' own disclosure can be used to determine the scope and meaning of terms recited in the claims. However, applicants believe it is improper to use their own disclosure as prior art. In referring to Table 2 (see page 4 of pending Office Action) to show that ingredients not recited in the claims may be added to the composition, applicants believe that the Official Action improperly relies on applicants' own disclosure.

Thus, applicants believe that the invention set forth in claim 29 of the present application is not an obvious variation of the claims in the '367 patent and request that the double patenting rejection be withdrawn.

In view of the present amendment and the foregoing remarks, therefore, applicants believe that this application is now in condition for allowance at the time of the next Official action. Allowance and passage to issue on that basis are accordingly respectfully requested.

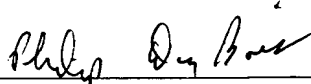
The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

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overpayment to Deposit Account No. 25-0120 for any additional
fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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